IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.524 OF 2006
IN
NOTICE OF MOTION NO. OF 2006
IN
B.C.C.C. S.C. SUIT NO.2552 OF 2006
WITH
CIVIL APPLICATION NO.661 OF 2006

Vasant Pandurang Patil & Anr. ...Appellants

Versus

Bhalchandra Sukur Bhandari & Anr. ...Respondents

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Mr.S.Sakhardande i/b Mr.S.S.Wagh for Appellants.

Mr.M.S.D'Mello for Respondents.

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**CORAM: A.M.KHANWILKAR, J.**

**JULY 19, 2006.**

**P.C.**

1. Heard Counsel for the parties. Perused the relevant documents on record.

2. Admit. Mr.D'Mello waives notice for the Respondents.

3. As Appeal involves short question, the same is taken up for final disposal forthwith, by consent.

4. This Appeal from Order takes exception to the Judgment and order passed by the Trial Court dated June 17, 2006 granting ad-interim relief in terms of prayer clause (a) of the Notice of Motion. Prayer clause (a) of the Notice of Motion reads thus :

> "(a) That pending the hearing and final disposal of the above suit the Defendants their servants and agents be restrained by an Order and Injunction of this Hon'ble Court from encroaching upon the suit lands in any manner whatsoever that is either by cultivating the suit lands or by reclaiming the suit lands or by filling up with mud thereon or by carrying out any construction in the suit lands."

5. The reason as noted by the Trial Court in the impugned order is that the Plaintiffs are the owners of the suit property; that the property is a barren land; that the Defendants intend to carry on construction on the said land which is

agricultural land. The Trial Court has accepted this version of the Plaintiffs and granted ad-interim relief in terms of prayer clause (a).

6. Having considered the rival submissions, I find substance in the argument of the Appellants that the nature of relief granted by the Trial Court is very wide. In fact, it is in the nature of mandatory order passed against the Defendants, evicting the Defendants from the suit land. So far as the claim of the Plaintiffs that they are owners of the property, that is not seriously disputed by the Defendants. According to the Defendants, however, they are cultivating the suit land for quite sometime. That position is supported by the pencil entry effected in the revenue records in 1978-79.

7. The Appellants state through Counsel before this Court that the Appellants have no intention to carry on any construction on the suit land till appropriate orders are passed by the competent Authority. Besides, Appellants have

relied on the photographs which indicate that suit land was under cultivation.

8. To get over this position, Counsel for the Respondents/Plaintiffs submits that the entire land is not under cultivation but only portion thereof was cultivated. Rest of the land is barren.

9. All these matters will have to be considered by the Trial Court on its own merits on the basis of materials to be produced by the parties while finally deciding the Notice of Motion. At ad-interim stage, it is not possible to countenance the nature of relief as granted by the Trial Court as reproduced earlier. At best, the Trial Court could have directed the parties to maintain status-quo with regard to the suit property. In any case, the Appellants before this Court have undertaken that no construction will be carried on on the suit plot. That undertaking is accepted.

10. Accordingly this Appeal succeeds. The impugned order is set-aside. Instead, the parties

are directed to maintain status-quo with regard to the suit property till the disposal of the Notice of Motion.

11. The Trial Court shall finally decide the Notice of Motion by end of August 2006.

12. Parties to appear before the Trial Court on 28th July 2006 on which date, the Trial Court may proceed to hear the parties and pass final orders or assign some suitable date, keeping in mind that the Notice of Motion will have to be finally disposed of by end of August 2007.

13. All questions are left open to be decided on its own merits in accordance with law. Parties shall exchange pleadings and file the same before the Trial Court latest by 25th July 2006, so that, the Trial Court may proceed with the hearing of the Motion on 28th July 2006.

14. The above observation is made on the basis of the assurance given by the parties through Counsel that they will extend full cooperation to

the Trial Court for early disposal of the Notice of Motion.

A.M.KHANWILKAR, J.